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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/581,632	06/13/2000	MICHYASU CHIKADA	9683/63	9833
757	7590	10/05/2004	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			DINH, KHANH Q	
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/581,632	Applicant(s) CHIKADA ET AL.	
	Examiner Khanh Dinh	Art Unit 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-20 and 22-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-20 and 22-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/16/2004 has been entered.
2. Claim 21 is canceled. Claims 18-20, 22-25 and new claims 26-32 are presented for examination.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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4. Claims 18-20, 22, 25-30 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Wallach et al., US pat. No.6,292,905.

As to claim 18, Wallach disclose in a communication device comprising a communication module, a communication control method comprising of:

Detecting a disruption of communication while the communication is in progress by the communication module (using the process 152B of fig.5A to detect the failure of server 56) and determining whether the disrupted communication is restorable (determining that the server 54 can provide backup capacity, see figs. 5A-E, abstract, col.7 lines 25-49).

when the disrupted communication is determined not restorable, reporting the disruption to the communication module and if the disrupted communication is determined restorable (based on the communications reestablished between servers), disguising the disruption from the data communication module while monitoring if the disrupted communication becomes ready for restoration (see col.7 line 50 to col.8 line 34).

and reporting the disruption to the data communication module if the disrupted communication does not become ready within a period of time, whereas, if the disrupted communication become ready for restoration within a period of time, reestablishing the disrupted communication to resume the communication without reporting the disruption to the communication module (providing a backup service to servers, see col.8 line 50 to col.9 line 35).

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As to claim 19, Wallach discloses the data communication device is selected from a group of consisting of a portable computer, a server and a facsimile (see server 54 of fig.5A).

As to claim 20, Wallach discloses monitoring whether the disrupted communication has become restorable and reestablishing the communication after the disrupted communication has become restorable (see fig.8B, col.12 line 11 to col.13 line 46).

As to claim 22, Wallach discloses that the disrupted communication does not become restorable if is caused by congestion in a network (see col.3 lines 38-63 and col.7 line 25 to col.8 line 33)

As to claim 25, Wallach discloses the disruption from the data communication from the data communication module comprising not reporting the disruption to the data communication module (see fig.4 and col.6 line 37 to col.7 line 24 and col.8 lines 1-35).

As to claim 26, Wallach discloses that in a data communication device that communicates with a corresponding data communication device over a network, a communication control module comprising:

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a communication control (using the process 152B of fig.5A to detect the failure of server 56) that controls data communication with the corresponding data communication device under direction of the data communication device (determining that the server 54 can provide backup capacity, see figs. 5A-E, abstract, col.7 lines 25-49).

a network analyzer that detects a disruption of the data communication and determines, based on a cause of the disruption, whether or not the disrupted data communication is restorable (based on the communications reestablished between servers), wherein the network analyzer reports the communication disruption to the data communication device if it determines that the disrupted data communication is not restorable (see col.7 line 50 to col.8 line 34).

a network monitor that monitors the network within a period of time to detect if the disrupted communication becomes ready for restoration (see fig.3 and col.6 line 10 to col.7 line 24).

a communication disruption management that disguises the communication disruption from the data communication device while the network monitor monitors the network, wherein the communication disruption management reports the communication disruption to the data communication device if the network monitor fails to detect within the period of time that the disrupted communication becomes ready for restoration, whereas if the network monitor detects within the period of time that the disrupted communication becomes ready for restoration, the communication disruption management instructs the communication control, without reporting the disruption to the

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communication device, to reestablish the disrupted communication and resume the data communication (providing a backup and auto-recover service to servers, see col.8 line 50 to col.9 line 35 and col.12 lines 11-53).

As to claim 27, Wallach discloses the data communication device is selected from a group consisting of a portable computer, a server and a facsimile (group of servers, see fig.3, col.6 line 10 to col.7 line 24).

As to claim 28, Wallach discloses monitoring the network, the network monitor causes a communication adapter to diagnose the network at regular intervals and waits for a diagnostic result from the communication adapter (see fig.6A, col.8 line 50 to col.9 line 35 and col.10 lines 4-54).

As to claim 29, Wallach discloses network analyzer determines that the disrupted communication is restorable if the disruption is caused by a traffic congestion in the network (see fig.6A, col.8 line 50 to col.9 line 35 and col.10 lines 4-54).

As to claim 30, Wallach discloses the data communication device is communicating wirelessly with the corresponding data communication device (see col.12 lines 11-53 and col.13 line 31 to col.14 line 29).

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As to claim 32, Wallach discloses disguising the disruption from the data communication device, the communication disruption management does not report the disruption to the communication device as if the disruption never happened and lets the data communication device repeat communication operations that it was performing before the disruption (see col.12 lines 11-53 and col.13 line 31 to col.14 line 29).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 23, 24 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallach et al., US pat. No.6,292,905 in view of Ezaki, US pat. No.6,134,436.

Wallach's teachings still applied as in item 4 above. Wallach does not specifically disclose the data communication module performs data communication



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through a portable terminal which wirelessly communicates with a radio base station, the diagnosing module determines whether or not the portable terminal is within a wireless zone formed by the radio base station, and the judging module judges, based on whether or not the portable terminal is within the wireless zone, whether to reestablish the interrupted communication line. However, Ezaki discloses that wherein the data communication module performs data communication through a portable terminal (terminal 13 of fig.3) which wirelessly communicates with a radio base station (16 fig.3), the diagnosing module determines whether or not the portable terminal is within a wireless zone formed by the radio base station, and the judging module judges, based on whether or not the portable terminal is within the wireless zone, whether to reestablish the interrupted communication line (see figs.2, 3, abstract, col.6 line 42 to col.7 line 48 and col.8 lines 3-51). It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Ezaki's teachings into the computer system of Wallach to reconnect communication between network devices in various network environments because it would have ensured stable communication between terminal users in radio signal communication system without increasing the number of radio base stations and without a burden on a system operator.

### ***Response to Arguments***

7. Applicant's arguments filed 9/16/2004 have been fully considered but they are not persuasive.

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\* Applicant asserts that the cited Ezaki reference is not a prior art because it was filed after the Applicant's claimed priority date.

*Examiner respectfully submits another Ezaki reference (U.S. 6,134,436) filed on 3/4/1998 and still discloses the Applicant claimed invention as rejected above.*

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8. Claims 18-20 and 22-32 are *rejected*.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh Dinh whose telephone number is (703) 308-8528. The examiner can normally be reached on Monday through Friday from 8:00 A.m. to 5:00 P.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung, can be reached on (703) 308-6687. The fax phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



Khanh Dinh  
Patent Examiner  
Art Unit 2151  
9/28/2004